**"CR"**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA 1928

CRL.A.No. 1808 of 2005(A)

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**SC.122/2005 of the Addl. Sessions Judge, Thalassery**

APPELLANT:

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VINODAN @ BOSE, S/O. ANANDAN,
C.NO.2179, CENTRAL PRISON, KANNUR.

BY ADV. ADV.SABEENA JAYAN(STATE BRIEF)

RESPONDENTS:

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STATE OF KERALA
(CR.NO.84/2004 CHAKKARAKKAL POLICE STATION).

BY PUBLIC PROSECUTOR SRI. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/11/2006, THE COURT ON 02/01/2007 DELIVERED THE FOLLOWING:

ani.

**"CR"**

**V. RAMKUMAR, J.**
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**Criminal Appeal No. 1808 of 2005**
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**Dated, this the 2nd day of January 2007**

**JUDGMENT**

In this appeal preferred from the Central Prison, Kannur, the appellant who was the sole accused in S.C. 122/05 on the file of the Addl. Sessions Court, (Adhoc-II), Thalassery, challenges the conviction entered and the sentence passed against him by the said court for offences punishable under Sections 498 A and 306 I.P.C.

***THE PROSECUTION CASE***

2. The case of the prosecution can be summarised as follows:-

The accused namely Vazhayil Puthen Purayil Vinodan @ Bose of Kanhirode amsom, Thalamunda desom married the deceased namely Olachery Sreeja, D/o.Gopalan of Balakandi house, Koodali Amsom. Their marriage was solemnized on 8-12-2002 as per religious rites . One month after their marriage, they started living in the house of Sreeja. The accused used to come home consuming liquor and ill-treat her both mentally and physically demanding more money. On 2-3-2004, Sreeja had gone to the house of a relative of hers to attend a funeral ceremony. The accused had also gone there. While in that house, the accused abused her and called her out even without allowing her to take food from that house. He forcibly took her out and when they reached near the Kanhirodevayal A.L.P. School the accused and Sreeja had a scuffle during the course of which the accused snatched away the thali chain of Sreeja from her neck. Due to the mental shock and the consequent depression on account of the above conduct of the accused, some time between 2.30 and 4.30 p.m., Sreeja committed suicide by jumping into the well situated within the compound of the said School. Sreeja was driven to the extreme

step of committing suicide on account of the physical and mental cruelty meted out to her by her husband, the accused . The accused has thereby committed offences punishable under Sections 498 A and 306 I.P.C..

3. On the accused pleading not guilty to the charge framed against him by the court below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 13 witnesses as P.Ws 1 to 13 and got marked 7 documents and Exts.P1 to P7 and six material objects as MOs 1 to 6.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. Since the court below did not consider this a fit case for recording an order of acquittal under Sec. 232 Cr.P.C. the accused was called upon to enter on his defence and to adduce any evidence which he might have in support thereof. The accused did not adduce any defence evidence.

6. The learned Addl. Sessions Judge as per judgment dated 5-5-2005 found the appellant guilty of the offences charged against him. For the conviction under Sec. 498 A I.P.C., the appellant was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/- and on default to pay the same, to suffer simple imprisonment for three months. For the conviction under section 306 I.P.C. the appellant was sentenced to rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- and on default to pay the fine to suffer simple imprisonment for six months. The substantive sentences were directed to run concurrently. It is the said judgment which is assailed in this appeal.

7. The only point which arises for consideration in this appeal is as to

whether the conviction entered and the sentence passed against the appellant are sustainable or not ?

**THE POINT:**

8. I heard Advocate Smt. Sabeena Jayan, the learned counsel who defended the appellant on State Brief and Advocate Sri. Sivakumar, the learned Public Prosecutor who defended the State.

***THE PROSECUTION EVIDENCE***

9. P.W.1 (Yajneswaran) is the headmaster of the Kanhirode L.P. School. 3-3-2004 was a working day for the School. On that day at about lunch time the students of 4th standard came and reported to P.W.1 that somebody was found in the well. P.W.1 and others went and peeped into the well to find a lady lying dead in the well with her face downwards. She was wearing a churidar. Thereupon holiday was declared for the school and the children were sent away. P.W.1 then went to the Chakkarakallu police station and lodged Ext.P1 F.I. Statement. The police came and took out the dead body. Before the police removed the dead body the accused had come there.

10. P.W.2 (Mohanan) runs a stationery shop near the L.P. School, Kanhirode. He is an attester to Ext.p2 scene mahazar prepared by the police.

11. P.W.3 (Leelavathy) is the mother of the deceased. The marriage between the accused and the deceased took place on 8-12-2002. Sreeja died in the month of March 2004. P.W.3 heard that her daughter Sreeja had committed suicide. The accused used to ill-treat her after coming home drunk. He used to beat her and inflict corporal torture on her after closing the door. If anybody tried to interfere he used to set up on him also. Until one month of her marriage Sreeja was residing in her matrimonial home. Thereafter she shifted to her ancestral home at Koodali where she was residing until her death. A few days prior to her death the accused

came to her house fully drunk and after getting inside the room of Sreeja and bolting the door from inside he bit her nose causing a bleeding injury. Hearing the hue and cry P.W.3 and others gained forcible entry into the room after breaking open the built - in wall almirah. Sreeja was thus rescued from further attack by the accused. One week prior to the death of Sreeja the accused used to come to the house of P.W.3 in a fully inebriated condition almost everyday and used to threaten both Sreeja and P.W.3. He used to point his index finger at Sreeja and utter that he would exterminate her and then take her younger sisters. The day previous to Sreeja's death it was the 40th day ceremony of Sreeja's paternal aunt. Sreeja and her sisters Sujatha and Girija had gone to that house in advance. P.W.3 and her 3rd daughter were alone in that house. On that day the accused came there in the morning after consuming alcohol and enquired about Sreeja. When P.W.3 told him that Sreeja was not there in the house the accused pointed his index finger at her and told her that he would teach her a lesson and he then left the house. Accused went straight to the house where the 40th day ceremony was taking place. From there he called Sreeja out and after taking her to the rear side of the house he scolded her. Sujatha, the daughter of P.W.3 had later told P.W.3 that the accused was thereafter seen dragging Sreeja away. Both the accused and the deceased did not return that day. P.W.3 was under the impression that the accused had gone home. It was on the next day evening that she came to know that Sreeja had died. Prior to her death Sreeja had a doubt that she was pregnant and on consulting a doctor it was confirmed that there was no pregnancy. Even prior to that she had abortions on account of which Sreeja was mentally depressed. But Sreeja had not told P.W.3 that she would commit suicide for not being able to conceive . Sreeja had consulted a doctor for the mental depression consequent on her inability to conceive. She was taking pills for that. P.W.3 had subsequently destroyed the prescriptions of the doctor. Ordinarily the

custom is that the wife will stay in her matrimonial home. But Sreeja had come down to the house of P.W.3 and had taken up residence there. It was on account of the ill-treatment by the accused. She was actually sent out from her matrimonial home by the accused. The mother and the sisters of the accused did not attend the funeral of Sreeja. she does not know whether the accused had tried to commit suicide earlier. She had not heard anybody saying so. The husband of P.W.3 was a coolie labourer who died 10 or 14 years ago. The only property they have is the 10 cents of land and the house thereon. The accused is a coconut climber. It was about one year ago that the accused had bitten the nose of Sreeja. It was only in connection with that incident that Sreeja was taken to a doctor and for no other purpose. From about one week prior to her death the accused had intensified his cruelty towards Sreeja. He was harassing P.W.3, Sreeja and her younger sisters as well. Accused used to come home drunk on all those days. Sujatha (PW4) did not tell her the circumstances under which the accused finally had taken the deceased from the house where the 40th day ceremony was being conducted. P.W.3 suspects the accused for the death of her daughter Sreeja since her daughter Sreeja was last seen alive in the company of the accused after the latter had snatched away her thali chain.

12. P.W.4 (Sujatha) is one of the sisters of deceased Sreeja. She has also corroborated the testimony of P.W.3. She was with the deceased in the house of her paternal aunt where the 40th day death ceremony was conducted. She had seen the accused abusing the deceased and taking her away even before she could take food from that house. With a view to persuade the deceased to come back to the house where the ceremonies were going on Renjith (PW5) the son of the paternal aunt had gone after the accused. But the accused, after snatching away the thali chain of Sreeja ran away from there. Even though Renjith called the deceased back, she did not go back saying that she was going to her house. After the obsequies when P.W.4

along with her mother and sisters reached home they did not find the deceased and the accused at home. The next day P.W.4 enquired in the neighbourhood of the of the accused by making phone calls. On being told that the deceased had not reached there. P.W.4 made enquiries in the houses of other relatives and was told that the accused and Sreeja had not been there. It was subsequently that she came to know that her sister had committed suicide. After seeing the dead body when P.W.4 returned to her house she found the broken chain of her deceased sister on the table and it was evidently placed on the table through the window which had no shutter.

13. P.W.5 (Renjith) is the cousin brother of deceased Sreeja. It was in his house that Sreeja and her sisters had come, followed by the accused, in connection with the 40th day death ceremony. He had seen the accused and deceased Sreeja engaged in a conversation at the rear portion of his house and the accused thereafter dragging the deceased away in an angry mood. Seeing this P.W.5 had followed them. He saw the accused snatching away the thali chain of Sreeja. He invited Sreeja to come back, have food and then go. But she told him that she was going home and she ran away weeping. He had told P.W.4 Sujatha about this.

14. P.W.6 (Sreejith) is the brother of deceased Sreeja. It was he who once rescued Sreeja who was subjected to corporal torture and whose nose was bitten by the accused after closing the door. Sreeja had told him that the accused had bitten her nose. According to P.W.6 the reason for his sister committing suicide was the constant ill-treatment meted out by the accused under the influence of alcohol.

15. P.W.7 (Dr. Sjith Sreenivas) who was the police surgeon in the District Hospital, Kannur conducted the autopsy over 30 year old Sreeja and proved Ext.P3 postmortem certificate as per which the death of Sreeja was due to drowning. He was however, unable to say whether death was homicidal or suicidal.

16. P.W.8 (Kuhammed Kunhi) is a neighbour of the deceased. He deposed

that the accused was in the habit of ill-treating deceased Sreeja and had once bitten her nose inflicting a bleeding injury. He however admitted that he did not directly see the said incident and that he was at that time sitting in the vegetable shop of a friend of his at Koodali.

17. P.W.9 (Mohanan) is a member of the 11th ward of Koodali Grama Panchayath. He is an attester to Ext.P4 inquest report.

18. P.W.10 (Narayanan) who was the Secretary of the Koodali Grama Panchayath proved Ext.P5 marriage certificate between the accused and the deceased.

19. P.W.11 (Damodaran) was the Tahsildar of Kannur Taluk and he held inquest over the dead body of Sreeja and proved Ext.P6 inquest report.

20. P.W.12 (Janardhanan) was the Sub Inspector of Chakkarakallu Police Station. He recorded Ext.P1 First Information Statement of P.W.1 the Headmaster of Kanhirode A.L.P. School and registered Ext.P1 (a) F.I.R. under the caption "unnatural death" and conducted the investigation.

21. P.W.13 (Bhuvanendran) was the Dy. S.P. , Kannur. He conducted the latter part of the investigation and finally laid the charge.

***ARGUMENTS IN APPEAL***

22. Adv. Smt. Sabeena Jayan who defended the appellant made the following submissions in support of her fervent plea for acquittal of the accused:-

There is evidence to show that Sreeja could not conceive and beget children of her own. She was therefore, mentally dejected on account of that. There is no direct evidence to the effect that the accused was in the habit of treating his wife with cruelty. The alleged act of the accused biting the nose of Sreeja took place more than six months prior to the death of Sreeja. First of all, there is no direct evidence in support of the said incident. Secondly, even if, the said incident is, true the same could not have constituted the immediate provocation for Sreeja committing suicide.

The alleged incident of accused snatching away her chain on 2-3-2004 also does not appear to be true or credible. If the accused had snatched away her thali chain, there is no explanation for the recovery of the broken chain from the table in the house of P.W.3. The chances are that Sreeja herself had kept the broken chain on the table before leaving the house. At any rate there is no evidence adduced to show that the acts attributed to the accused would constitute "willful conduct" within the meaning of clause (a) to the Explanation to Sec. 498 A I.P.C. Sensitive ladies may commit suicide even for petty disputes. Hence one cannot definitely conclude whether the husband alone was responsible for the wife committing suicide. The act of committing suicide may be the outcome of some unhappiness even for a moment inducing the wife to take the extreme step of ending her own life. It is not every cruelty which constitutes an offence punishable under Sec. 498 A I.P.C. Cruelty falling under clause (a) of the Explanation to the Section means any "willful conduct" which is of such a nature as is likely to drive the woman to commit suicide. "Willful conduct" means some conduct willfully done and it may be inferred by direct of indirect evidence. The word "willful" contemplates obstinate and deliberate behaviour on the part of the offender. Thus mens rea is an essential ingredient of the offence **(C. Veerudu and another v. State of Andhra Pradesh - 1989 Crl.L.J. NOC 52 (AP) and Lawrence v. State of Kerala- 2002 (2) KLT SN 140).** Husband developing vices ipso facto does not amount to cruelty. In order to constitute "willful conduct" within the meaning of the Section, the conduct on the part of the husband must be something more than addiction to vices. Further such conduct on the part of the husband must induce similarly circumstanced woman in a given society to commit suicide. The conduct of the husband in developing illicit intimacy with another woman and consequently deserting the wife and minor child does not amount to harassment sufficient to induce the wife to entertain the idea of committing suicide. **(Besai**

**Venkata Ramana Murthy v. State - 2003 Crl.L.J. 4708).** The law does not contemplate the usual misunderstandings or quarrels or minor matrimonial problems as comprehending "willful conduct" of the nature envisaged by the Explanation to the Section. (**See Babu Dey v. State of West Bengal - 2000 Crl.L.J. 328).** The cruel treatment meted out to her by the husband should be such as to force her to commit suicide. **(See Dhobilal v. State of M.P. - 1998 Crl. L.J. 4108).** In order to bring home the offence under the Section it should be established that the consequence of cruelty was of such a nature that it drove the woman to commit suicide. If the said ingredient of the offence is not established the question of proceeding against the accused under the Section does not arise. **( S. Abboy Naidu v. R.Sundarajan and others - 1994 Crl.L.J. 641).** Family bickerings which cannot be taken serious note of do not come within the ambit of cruelty envisaged by Section 498 A I.P.C. **( Suresh Kumar v. State of Kerala 2004 (3) KLT SN. 56).** Mere harassment or even infliction of injury by the husband on his wife will not come under Section 498 A.

***JUDICIAL RESOLUTION***

23. I am afraid that I cannot agree with the above submissions. P.W.3 who is the mother of Sreeja has credibly deposed before court that even though Sreeja was dejected in life as she could not bear children, that would not induce her to commit suicide. Moreover the inability of Sreeja to conceive could not constitute the immediate provocation for a hurried suicide. On the contrary, the incident which took place in the house of the paternal aunt of Sreeja, as spoken to by P.Ws 4 and 5 will clearly show that the accused went to the house of P.W.5 in search of Sreeja and after meeting her there he picked up a quarrel with her from the rear side of the house. Sreeja had paid a visit to that house in connection with the 40th day death ceremony of her paternal aunt who was the mother of P.W.5. After locking horns with

his wife, even before she could take food from that house the accused dragged Sreeja out of that house. This was seen by P.Ws 4 and 5. In order to induce Sreeja to return to his house and have food P.W.5 went after her. On the way he saw a scuffle between the accused and Sreeja and the accused forcibly snatching away the thali chain of Sreeja. This was from the vicinity of Kanhirode A.L.P. School. It was on her way home that Sreeja jumped into the well situated in the school compound and put an end to her miseries in life by choosing her own watery grave. On coming to know of the conduct of his wife committing suicide, the accused was evidently leaving the snapped thali chain on the table of the house through the window which had no shutter. This was an exculpatory checkmate made by the accused to salvage himself.

24. Whatever might be the torments of Sreeja during her post nuptial life with the accused, the husband snatching away the thali chain (Mangalyasoothram) from her neck would be the last thing which a Hindu wife could endure in her life. Sreeja was already despondent and mentally depressed by the realisation that she could not conceive a child. Such helpless women will always look to their husbands for a soothening word or a comforting gesture. instead of consoling her and relieving her of her mental anguish and tension, what the accused did was to break the nuptial tie which was holding them together in solemn wedlock till then. The sacred thali chain is the purest tangible evidence of coverture for a Hindu wife who considers the same as the most sacrosanct emblem of the bond of matrimony. It was this sacred chain which was unceremoniously and savagely snatched away by the accused leaving Sreeja in a state of uncontrollable mental shock and anguish. To a faithful Hindu wife, the snapping of her thali chain by the husband means nothing short of widowhood and can constitute sufficient stimulus to end her life even. Hence this act of the accused would clearly amount to "willful conduct" of such description and magnitude as to drive Sreeja to put an end to her life.

25. It may be difficult, if not impossible, to enumerate all acts amounting to "willful conduct" within the meaning of the Explanation to Sec. 498 A I.P.C. so as to constitute cruelty. It is also not possible to bring those acts within the definition of a straight jacket formula. All women are not alike. Some are brave and courageous and so pachydermic that they can withstand any humiliation or physical or mental pain until the last. There are a few others who are so frail , weak-minded, chicken-hearted and hypersensitive that they react violently even to the slightest stimuli of pain, ridicule or even to allusive utterances. There is a third category who painfully absorb the shock and suffer the humiliation in silence showing remarkable power of endurance until they reach a stage of break-down. Women of this last category dislike even divulging to others about the melancholic chapter pertaining to their connubial life except to those in whom they have complete faith and confidence. The susceptibilities of the particular woman to the conjugal stress and strains will have to be considered by the Courts trying such offences. The very same conduct which may amount to cruelty embraced by the section in a given case may not amount to cruelty in yet another case having due regard to the class of society to which the parties belong and their ways of life. What the law contemplates is a conduct which is likely to drive the particular woman (i.e. the wife of the indictee) to commit suicide. Similarly the "willful conduct" must be a conduct which is deliberate and intentional and is of such a nature as is likely to drive the woman in question to commit suicide. But the law does not go beyond this limit entitling the Courts to forge a further requirement that the acts constituting the willful conduct should have been committed with the intention of driving the woman to commit suicide. **(Vide 2006 (3) KLT 30 - Devassia v. State of Kerala).** Thus, the act of committing suicide may be the proximate result of the deliberate conduct of the husband although he may not have intended that his wife, as a result of his conduct, should commit suicide. But while

committing the deliberate act, the husband, having regard to the mental make-up, disposition, temperament, propensities and proneness of his wife (whom he alone knows better), should reasonably foresee or anticipate that his conduct of committing the above act is likely to impel her to commit suicide. If this is discernible from the evidence, then an inference that the accused subjected his wife to cruelty within the meaning of the Section is irresistible. The term "cruelty" has been designedly left in an elastic form to be decided by the judicial authorities on the facts situation available in each case so as to meet the necessities of the changing requirements and concepts of the society.

26. On the evidence in this case I have no hesitation to hold that the act of the accused snatching away the thali chain of his wife Sreeja from her neck would constitute a reasonable nexus between the cruelty meted out by the accused and the consequential act of suicide committed by the deceased. This is a case in which the presumption under Section 113 A of the Evidence Act was also be profitably pressed into service by the prosecution to rightly contend for the position that the accused had abetted the suicide committed by his wife Sreeja. The conviction was rightly entered against the appellant. The sentence imposed on the appellant also cannot be said to be harsh or disproportionately high.

In the result this appeal is dismissed confirming the conviction entered and the sentence passed against the appellant.

**V. RAMKUMAR,**

**(JUDGE)**

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**V. RAMKUMAR, J.**
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**Criminal Appeal No. 1808 of 2005**
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**Dated, this the 2nd day of January 2007**

**JUDGMENT**